

STATE OF IOWA  
PROPERTY ASSESSMENT APPEAL BOARD

**Fareway Stores, Inc.,**  
Appellant,

**v.**

**Dallas County Board of Review,**  
Appellee.

**ORDER**

**Docket No. 13-25-0934**  
**Parcel No. 11-32-251-010**

**Fareway Stores, Inc.,**  
Appellant,

**v.**

**Dallas County Board of Review,**  
Appellee.

**ORDER**

**Docket No. 13-25-0935**  
**Parcel No. 12-34-103-002**

On March 16, 2015, the above-captioned appeals came on for a consolidated hearing before the Property Assessment Appeal Board (PAAB). The appeals were conducted under Iowa Code section 441.37A(2) and Iowa Administrative Code rules 701-71.21(1) et al. Patrick Burk of Brick Gentry, P.C., West Des Moines, represented Fareway Stores, Inc. William Stiles of Dickinson, Mackaman, Tyler, and Hagen, P.C., Des Moines, represented the Board of Review. The Appeal Board having reviewed the records, heard the testimony, and being fully advised finds:

**I. Background Facts and Proceedings**

Fareway Stores, Inc. is the owner of commercially classified properties located at 804 Nile Kinnick S., Adel and 200 Laurel Street, Waukee. Both properties are operated as Fareway grocery stores.

The Adel property (Docket No. 13-25-0934) was built in 1993 and has 19,078 square feet of gross building area (GBA) and 52,000 square feet of concrete paving. The site is 2.57 acres. As of

January 1, 2013, the property was assessed for \$1,537,860, allocated as \$447,800 in land value and \$1,090,060 in improvement value.

The Waukee property (Docket No. 13-25-0935) was built in 1998 and has 22,538 square feet of GBA and 102,500 square feet of concrete paving. The site is 3.90 acres. It was assessed for \$2,354,200, allocated as \$679,540 in land value and \$1,674,660 in improvement value, as of January 1, 2013.

Fareway protested the assessments of the properties to the Dallas County Board of Review. It asserted the properties were inequitably assessed and assessed for more than authorized by law under sections 441.37(1)(a)(1) and (2). The Board of Review denied the protests. Fareway then appealed to PAAB, reasserting its over assessment claim. It did not provide any evidence or argument in support of an equity claim and we find it has been waived.

## **II. Findings of Fact**

### **A. Lock Appraisals**

In support of its over assessment claims on both the Adel and Waukee properties, Fareway submitted appraisals completed by Fred Lock of Iowa Appraisal and Research Corporation, Des Moines, Iowa. (Waukee – Ex. 1; Adel – Ex. 1) Lock testified that Robyn Marshall prepared the appraisals with his assistance.

Lock developed all three approaches to value and the following chart summarizes his conclusions.

	<b>Sales Approach</b>	<b>Income Approach</b>	<b>Cost Approach</b>	<b>Final Opinion of Value</b>
Adel	\$1,240,000	\$1,160,000	\$1,050,000	\$1,200,000
Waukee	\$1,420,000	\$1,380,000	\$1,390,000	\$1,400,000

Lock testified the Adel property is located on an arterial street, was originally built and designed as a grocery store, and sold to Fareway for continued use.

Lock describes the Waukee property as having good visibility from SE Laurel Street, but that visibility is limited on Hickman Road due to improvements constructed north of the property. He concludes that both properties could be used for any retail use.

i. Cost Approach

*Cost Analysis for Adel Property*

Lock considered four land sales for the Adel property, as summarized in the following chart.

<b>Location</b>	<b>Site Size (SF)</b>	<b>Date of Sale</b>	<b>Time Adjusted Sale Price</b>	<b>Sale Price/SF</b>
Subject	111,949	N/A	N/A	N/A
Bondurant	157,057	Apr-13	\$350,000	\$2.23
Winterset	251,341	Aug-10	\$369,750	\$1.47
Indianola	123,275	May-10	\$257,500	\$2.09
Williamsburg	165,528	Apr-10	\$345,050	\$2.08

Sale 1 is located in Bondurant. It was purchased with the intent of improving it with a grocery store. When questioned, Lock testified he was unaware that the purchaser of this property was a civic committee with the intent of development for community enrichment; or, that the seller was the Mayor of Bondurant. He did not adjust the sale for any influence this may have had on the purchase price.

Sale 2 is located on Highway 92 in Winterset; Fareway purchased it and improved it with a grocery store. Sale 3, located in Indianola, sold to Casey's Marketing Company. We note both of these sales occurred in 2010, and we question the use of these sales when Lock used newer sales, more relevant to the January 1, 2013, assessment date, in his Waukee appraisal.

Sale 4 is located in Williamsburg and required \$135,000 in dirt work, which Lock included in the sale price. We again question the inclusion of this sale as it is so remote, especially in the absence of a meaningful, quantified adjustment to account for the varying location.

Lock qualitatively adjusted the sales and determined an opinion of value for the Adel site of \$2.10 per-square-foot (\$240,000).

The Board of Review questioned whether Lock considered any land sales in Dallas County. Lock explained he was unaware of land sales in Dallas County. He testified that if there were land sales and he was aware of them, he disqualified those sales from his analysis. The Board of Review further asked Lock why he failed to include in the Adel appraisal a December 2012 sale in Waukee, which sold for \$4.12 per square foot, and was included in his appraisal of the Waukee Property. Lock had no explanation for the sale's exclusion in his Adel appraisal. He admitted that if he had used the higher land sale in this analysis, it would have driven his cost conclusions up. We find his inability to provide a rationale for the exclusion of the Dallas County sales impairs his credibility.

Lock estimated the cost new of the improvements using *Marshall and Swift's Valuation Service* and arrived at \$1,262,835. After applying a straight-line, age-life depreciation, and including the depreciated cost of site improvements and the land value, he concluded a total value of \$1,050,000 by the cost approach. (Adel – Ex. 1, p. 31).

In total, we are not convinced the sales selected by Lock and his method of qualitative adjustments results in an accurate reflection of the Adel property's land value as of January 1, 2013.

### *Cost Analysis for Waukee Property*

Lock considered four land sales for the Waukee property, as summarized in the following chart.

<b>Location</b>	<b>Site Size (SF)</b>	<b>Date of Sale</b>	<b>Time Adjusted Sale Price</b>	<b>Sale Price/SF</b>
Subject	169,884	N/A	N/A	N/A
Pleasant Hill	190,444	May-13	\$492,000	\$2.58
Bondurant	157,057	Apr-2013	\$350,000	\$2.23
Waukee	522,720	Dec-12	\$2,154,914	\$4.12
Clive	98,010	June-12	\$777,700	\$7.93

Sale 1 was a sale of land by the City of Pleasant Hill to Fareway. As a sale from a government entity to a private company, we do not find it to be a normal, arm's length transaction.

Sale 2 was a land sale in Bondurant, which Lock also used in the Adel appraisal.

Sale 3 was of 522,720 square feet of land (approximately 12 acres) along Hickman Road in Waukee. This site is roughly three times the size of the Waukee site (approximately 3.9 acres). Given the law of diminishing marginal returns, the sale price of \$4.12 per-square-foot would likely undervalue the Waukee property's land value. Although Lock's appraisal indicates he made a positive, qualitative adjustment to this sale, we are not convinced that quantitative adjustments could not be made.

Sale 4 involved a transfer from the State Savings Bank to the Luana Savings Bank. The Board of Review questioned Lock as to his knowledge that State Savings Bank obtained the sale property because of a foreclosure. Lock stated it would not surprise him to know it was a foreclosure sale. However, he noted it was on the market between one to two years and felt it had adequate exposure to the market, although he recognizes the seller's motivations may have had an impact on the sale price.

After adjustments, Lock reconciled the sales to estimate a land value of \$3.00 per-square-foot or \$510,000 (rounded). We note that Lock also provided a Competitive Listings Summary Table of

other land listings along Hickman Road in Waukee. The summary indicates that all of the properties are listed above \$4.50 per-square-foot. (Waukee – Ex. 1, p. 30).

In total, as with Lock’s Adel appraisal, we find the sales he used in this appraisal result in a below-market valuation of the Waukee property’s land in his cost approach.

Lock estimated the replacement cost new of the improvements using *Marshall and Swift’s Valuation Service* and concluded a value of \$1,257,395. After applying a straight-line, age-life depreciation, and including the depreciated cost of site improvements and the land value, he concluded a value of \$1,390,000 by the cost approach. (Waukee – Ex. 1, p. 32).

ii. Sales Comparison Approach

*Sales Comparison Analysis for Waukee and Adel Property*

Lock used the same four improved properties for analysis in his sales comparison approach for both the Adel and Waukee properties. In Lock’s opinion, all of the properties could have retail or grocery store use. The following chart is a summary of his sales.

	<b>Sale Date</b>	<b>Sale Price</b>	<b>Building Size</b>	<b>Age/Condition</b>
Sale 1 – Adel	\$1,275,000	Apr-12	19,078	1993/Average
Sale 2 - Sioux City	\$1,341,000	Feb-12	23,094	1998/Average
Sale 3 - Cedar Rapids	\$1,050,000	Feb-12	21,741	1972/Below Average
Sale 4 - Dubuque	\$650,000	Jan-12	11,770	1995/Average

Sale 1 is Fareway’s purchase of the Adel property in April 2012. SuperValue grocery was leasing the property prior to the sale. Lock reports that after Fareway purchased the subject property, it closed for a short time for remodeling and re-branding. (Adel – Ex. 1, p. 22). Lock testified that he did not know the cost of the remodeling or what was done to the property as part of that process. He agreed this would have been a reasonable question to ask his client when he developed the appraisal. Moreover, he admitted the sales price plus the remodeling costs would most accurately reflect what

was paid for the property. Additionally, he admitted that the subject property sold without the aid of a real estate broker and the sale price should have been adjusted to reflect this typical cost as well.

Sale 2 is located in Sioux City and was a vacant Staples store converted to a plumbing supply store.

Sale 3 is located in Cedar Rapids. In the past, the building had a grocery store use; however, it was vacant at the time of sale. Most recently, the use of the improvements was for storage/distribution, service, and retail sales. The current buyer converted the property into a used car dealership.

Sale 4 is located in Dubuque. According to Lock's verification of this sale, it was listed for nearly four years before it sold. Although, it was leased during this time for one to two years, it was vacant at time of sale. It was purchased for retail use.

Lock explained that he applied both qualitative and quantitative adjustments in the sales comparison analysis. He made quantitative adjustments for the age/condition and land/building ratio of each sale and qualitative adjustments for location and improvement size. Lock testified he used qualitative adjustments because he determined quantitative adjustments were too specific. Further, he testified that the plusses or minuses, which appear in his adjustment grid, really mean "anything" and various interpretations could be made of the information. The following charts summarizes Lock's sales grid.

<b>ADEL PROPERTY</b>							
	<b>Market Adjusted Sale Price PSF</b>	<b>Location</b>	<b>Size</b>	<b>Age/ Condition</b>	<b>HVAC</b>	<b>Land/Building Ratio</b>	<b>Adjusted Value/SF</b>
Subject - Adel	N/A						
Sale 1 – Adel	\$67.50			1.00	1.00	1.00	\$67.50
Sale 2 - Sioux City	\$58.65	-		0.95	1.00	1.04	\$58.06
Sale 3 - Cedar Rapids	\$48.78	-		1.05	1.00	1.04	\$53.17
Sale 4 - Dubuque	\$55.78	-	-	1.00	1.00	1.05	\$58.57
Reconciled Value PSF = \$65.00							

Lock's adjusted sales prices ranged from \$53.17 per-square-foot to \$67.50 per-square-foot. We note that the sale of the subject Adel property (Sale 1) sets the upper end of the range of value. After considering all the sales, Lock arrived at an opinion of \$65.00 per-square-foot (\$1,240,000 rounded) by the sales comparison approach. (Adel – Ex. 1, p. 36). Lock did not provide an explanation for why he determined a value for the Adel property that was less than its purchase price in 2012 and prior to its remodeling.

<b>WAUKEE PROPERTY</b>							
	<b>Market Adjusted Sale Price PSF</b>	<b>Location</b>	<b>Size</b>	<b>Age/ Condition</b>	<b>HVAC</b>	<b>Land/Building Ratio</b>	<b>Adjusted Value/SF</b>
Subject - Waukee	N/A						
Sale 1 – Adel	\$67.50	+		1.00	0.98	1.01	\$66.83
Sale 2 - Sioux City	\$58.65	-		0.95	0.96	1.08	\$57.48
Sale 3 - Cedar Rapids	\$48.78	-		1.05	1.00	1.07	\$54.63
Sale 4 - Dubuque	\$55.78	-	-	1.00	0.97	1.08	\$58.57
Reconciled Value PSF = \$63.00							

Lock's adjusted sales prices ranged from \$54.63 per-square-foot to \$66.83 per-square-foot. After considering all the sales, Lock arrived at an opinion of \$63.00 per-square-foot (\$1,420,000 rounded) by the sales comparison approach. (Waukee – Ex. 1, p. 37).



With the exception of Sale 1, the Board of Review noted that Lock's remaining sales did not have a continued use as a grocery store. Lock acknowledged this and stated he was unable to find fee-simple sales of continued-use grocery stores. He did find leased fee sales; however, in his opinion, adjusting for a leased fee sale is highly subjective, and he tries to avoid using these sales. The Board of Review was also critical of Lock's use of primarily vacant sales and questioned his ability to capture the value of the subject property as an operating grocery store. Lock had no response to this criticism.

iii. Income Approach

*Income Analysis for Waukee and Adel Property*

Lock also developed the income approach to value. He considered ten leases of properties ranging in size from 9100 square feet to over 48,000 square feet. The lease rates ranged from \$3.00 to \$10.00 per-square-foot with an average rent per-square-foot of \$6.60. (Waukee – Ex. 1, p. 39; Adel – Ex 1, p. 38). Lock also considered five comparable listings of similarly sized properties, which had rents ranging from \$2.50 per square foot to \$8.50 per square foot. (Waukee – Ex. 1, p. 39; Adel – Ex 1, p. 38). Based on these leases and listings, Lock opined a net rent of \$7.00 per-square-foot for the subject properties. (Waukee – Ex. 1, p. 42; Adel – Ex 1, p. 41). He did not provide explanation in his report or testimony as to how he reconciled to this value. Further, he did not reconcile his conclusions with the fact that the Adel property was previously rented as a grocery store for a net rent of \$7.55 per-square-foot prior to Fareway's purchase of the store and its renovations.

Lock used a vacancy rate of 10% for both properties based on a 2013 CBRE Market survey for big box retail buildings in the western suburbs and greater Des Moines area. (Waukee – Ex. 1, p. 40; Adel – Ex. 1, p. 39). We note the most recent year available (2012) for the survey cited by Lock indicates a vacancy rate of 5% or less. He also determined reserves for replacement and develops a reconstructed operating expense to conclude a net operating income for each property. (Waukee – Ex. 1, p. 42; Adel – Ex. 1, p. 41).

Lock relied on sales extraction, surveys, and a mortgage equity analysis to arrive at a capitalization rate of 8.5%, to which he loaded the tax rate and concludes a final opinion of value by the income approach. (Waukee – Ex. 1, p. 44; Adel – Ex. 1, p. 43). The chart below summarizes his results for the Adel and Waukee properties.

	<b>Adel</b>	<b>Waukee</b>
Gross Potential Income	\$133,546	\$157,766
Less: Vacancy and Collection Loss	\$13,355	\$15,777
Less: Total Operating Expenses	\$16,962	\$19,865
Net Operating Income	\$103,229	\$122,124
Loaded Capitalization Rate	8.88%	8.87%
<b>Estimate of Value by Income Approach</b>	<b>\$1,160,000 (rounded)</b>	<b>\$1,380,000 (rounded)</b>

Lock gave most consideration to the sales comparison approach and some consideration to both the cost and income approaches. Again, his conclusions are as follows:

	<b>Sales Approach</b>	<b>Income Approach</b>	<b>Cost Approach</b>	<b>Final Opinion of Value</b>
Adel	\$1,240,000	\$1,160,000	\$1,050,000	\$1,200,000
Waukee	\$1,420,000	\$1,380,000	\$1,390,000	\$1,400,000

We note Lock’s final opinion of value for the Adel property is \$75,000 less than what Fareway paid for the property only eight months prior to the assessment and before it made improvements; and despite the fact that Lock identified the market as increasing since the time of purchase.

#### B. Rich Hughes & Cathy Creighton

Rich Hughes, a consultant for the Dallas County Assessor’s Office, and Deputy Assessor Cathy Creighton testified for the Board of Review. Hughes explained that he was not involved with the assessment of the subject property, but provided assistance in the collection of data that the Assessor’s Office relied on in its evaluation to substantiate the assessment for the subject properties.

Creighton testified the January 1, 2013, initial assessment was based solely on the cost approach. Her office then developed the sales and income approaches because of this appeal. She

explained that she and Hughes collaborated to complete the sales and income approaches to value. (Waukee Ex. E & F; Adel Ex. E& F). Together, they determined the type of adjustments to make, but it was ultimately her prerogative to determine the specific adjustments and the weight afforded to the comparable properties.

a. Cost Approach

As noted, the 2013 assessments for the Adel and Waukee properties were based solely on the cost approach. Creighton explained that a revaluation of all grocery stores in Dallas County occurred in 2013. This revaluation and increase in values resulted in a change from an older version to the newer 2008 IOWA DEPARTMENT OF REVENUE REAL PROPERTY APPRAISAL MANUAL.

*Cost Analysis for Adel Property*

Creighton explained the property record card for the Adel property. (Adel – Ex. D). She testified that, in her opinion, during the 2013 revaluation the previously established \$4.00 per-square-foot land value was still reasonable and was not changed.

In arriving at the improvement value, Creighton inspected the Adel property and relied on the MANUAL to determine the cost new before applying depreciation to determine a replacement cost new less depreciation (RCNLD) of \$1,090,060. The 2013 assessed value by the cost approach is \$1,537,860.

*Cost Analysis for Waukee Property*

Creighton likewise explained the property record card for the Waukee property. (Waukee – Ex. D). Like the Adel property, Creighton determined that the established \$4.00 per-square-foot land value was reasonable and was not changed. Again, the MANUAL was used to determine a RCNLD improvement value of \$1,674,660. The 2013 assessed value by the cost approach is \$2,354,200.

b. Sales Comparison Approach

Hughes explained that he researched the market for sales of going-concerns. (Waukee – Ex. E; Adel – Ex. E). Further, he provided information to the Assessor’s Office for its consideration in determining adjustments. The following chart summarizes the Board of Review’s comparable sales, which were the same for both the Adel and Waukee properties.

	<b>Date of Sale</b>	<b>Sale Price</b>	<b>SP/SF</b>	<b>Year Built</b>	<b>Building Size</b>
Sale 1 - Adel	12-Apr	\$1,275,000	\$66.83	1993	19,078
Sale 2 - Sheldon	14-Nov	\$4,300,000	\$121.63	2011	35,353
Sale 3 - Rock Island, IL	12-Sep	\$1,420,000	\$76.76	2007	18,500
Sale 4 - Fairfield	14-Nov	\$10,700,000	\$154.32	2010	69,335
Sale 5 - Sioux Falls, SD	10-Sep	\$3,800,000	\$80.52	2006	47,194

Sale 1 is the 2012 sale of the subject Adel property. Hughes testified that he spoke with Jim Schugar who was the prior operator of the property. Schugar told Hughes that an estimated \$250,000 worth of improvements would occur after the sale. Hughes attempted to verify this with the City of Adel; however, it had no information, so he relied on Schugar’s estimate. Further, Hughes also verified that Schugar was leasing the property for \$7.55 per-square-foot on a net basis, which indicated a 10% capitalization rate. We note that because the sale did not include brokers’ fees or reflect the improvements Fareway intended to make subsequent to the purchase, it would result in a slightly higher capitalization rate. Creighton testified that she inspected the subject Adel property after its sale and was aware of repairs to the parking lot and signage improvements. She explained that after both interrogatories were completed and her creation of Exhibits E and F, she learned that reported improvements to the subject property totaled \$78,900. However, she was unclear on exactly what improvements these costs represented.

Hughes explained that Sales 2 and 4 are very similar. Both are Hy-Vee stores and were sale-leasebacks. There were included in the analysis due to a lack of fee-simple sales and because the

properties were of similar size to the Adel property. Creighton testified she was aware of this sale because many of the Hy-Vee stores' assessments are currently being litigated.

Sale 3 is located in Rock Island, Illinois. Hughes testified that Creighton found this sale and he verified the information. He explained the property was formerly an ACE Hardware and remodeled to an Aldi's grocery store. Creighton testified she had inspected this property. Fareway recalled Lock as a rebuttal witness regarding his familiarity with this sale. Lock testified that he did do some research but that it was not very thorough. He stated that he talked to an appraiser in Davenport who told him the store was built-to-suit for Aldi. Further, he said the rent was confirmed at \$5.50 per-square-foot, but he was unclear whether that rent represented the use to Ace Hardware or Aldi. Ultimately, he stated he did not know enough about the sale to determine what, if any, impact on value the rent conditions would have had on the sale.

As previously mentioned, Sale 4 was a Hy-Vee sale-leaseback. Hughes testified that in his experience working with the financing of Hy-Vee Stores, it sells them for the depreciated book value of the property. In essence, HyVee gives the store to the manager and it becomes the manager's responsibility to address the debt. As a result, Hughes testified he would need to adjust the sale upward to address the book value, but then would also need to adjust the sale downward to account Hy-Vee's strong credit rating. Therefore, Hughes considers it a wash and makes no adjustment for the sale-leaseback. Later, Fareway questioned Creighton about how she adjusted this sale because of its sale-leaseback. She explained it was unadjusted but she gave the sales with this condition the least consideration in her reconciliations.

Sale 5 was located in Sioux Falls, South Dakota. Sunshine Foods, a regional grocery store, occupied it at the time of sale. Investors purchased the property and leased it to Hy-Vee for a net rent of \$9.41. This sale was adjusted for market conditions, location, age/condition, and land/building ratio.

The following charts summarize the adjustments made for the Adel and Waukee properties.

<b>ADEL PROPERTY</b>						
	<b>Date of Sale</b>	<b>Sale Price</b>	<b>SP/SF</b>	<b>Year Built</b>	<b>Building Size</b>	<b>Adjusted Value/SF</b>
Sale 1 - Adel	12-Apr	\$1,275,000	\$66.83	1993	19,078	\$85.21
Sale 2 - Sheldon	14-Nov	\$4,300,000	\$121.63	2011	35,353	\$77.48
Sale 3 - Rock Island, IL	12-Sep	\$1,420,000	\$76.76	2007	18,500	\$88.27
Sale 4 - Fairfield	14-Nov	\$10,700,000	\$154.32	2010	69,335	\$83.18
Sale 5 - Sioux Falls, SD	10-Sep	\$3,800,000	\$80.52	2006	47,194	\$81.08

The adjusted sales prices ranged from \$77.48 per-square-foot to \$88.27 per-square-foot. After considering all the sales, the Board of Review asserts the correct value of the Adel property is \$85.10 per-square-foot (\$1,623,500 rounded) by the sales comparison approach.

The Board of Review also submitted two other sales of former grocery stores that were converted to retail use were also submitted to add support to Sales 1-5, but no consideration was given to them. After adjustments, these sales indicated a range between \$80.47 per-square-foot to \$91.75 per-square-foot.

<b>WAUKEE PROPERTY</b>						
	<b>Date of Sale</b>	<b>Sale Price</b>	<b>SP/SF</b>	<b>Year Built</b>	<b>Building Size</b>	<b>Adjusted Value/SF</b>
Sale 1 - Adel	12-Apr	\$1,275,000	\$66.83	1993	19,078	\$102.25
Sale 2 - Sheldon	14-Nov	\$4,300,000	\$121.63	2011	35,353	\$101.32
Sale 3 - Rock Island, IL	12-Sep	\$1,420,000	\$76.76	2007	18,500	\$106.15
Sale 4 - Fairfield	14-Nov	\$10,700,000	\$154.32	2010	69,335	\$105.87
Sale 5 - Sioux Falls, SD	10-Sep	\$3,800,000	\$80.52	2006	47,194	\$98.15

The adjusted sales prices ranged from \$98.15 per-square-foot to \$106.15 per-square-foot. Although Creighton considered all the comparable properties, ultimately, she relied solely on sales 1 and 2. As a result, the Board of Review asserts the correct value of the Waukee property is \$104.20 per-square-foot (\$2,348,500 rounded) by the sales comparison approach.

Like the Adel analysis, the Board of Review submitted two other sales of former grocery stores that were converted to retail use. After adjustments, these sales indicated between \$88.60 per-square-foot to \$100.48 per-square-foot.

c. Income Approach

Hughes also testified to an income analysis. (Waukee & Adel – Ex. F). He explained he provided some of the data, which Creighton relied on in the development of the income approaches. Creighton testified that she consulted with Hughes and she created the Exhibits. They relied on rental information from the Adel property and other sales identified earlier. Based on that data they concluded a rent of \$7.50 per-square-foot for the Adel property and \$9.00 per-square-foot for the Waukee property. (Waukee – Ex. F; Adel – Ex. F).

*Income Analysis for Adel Property*

For the analysis of both properties, Hughes determined a 3% vacancy factor. He relied on published manuals for the management and reserve ranges. Lastly, he relied on a mortgage-equity method to determine the capitalization rates. Creighton echoed Hughes testimony. In Creighton's opinion, this approach further supports the original assessments that were determined by the cost approach.

	<b>Adel</b>	<b>Waukee</b>
Gross Potential Income	\$143,085	\$202,842
Less: Vacancy and Collection Loss (3%)	\$4,293	\$6,085
Less: Management and Reserves (8%)	\$11,103	\$15,741
Net Operating Income	\$127,689	\$181,016
Loaded Capitalization Rate	8%	7.75%
Estimate of Value by Income Approach	\$1,596,113	\$2,335,693
Indicated Value (rounded)	\$1,600,000	\$2,300,000

Fareway's General Counsel Garrett Piklapp also testified. Piklapp provided personal knowledge of the 2012 sale of the subject property in Adel. He testified that consistent with the

interrogatories, the cost of the updates was roughly \$78,000; it included signage, flooring, electrical work, underfloor plumbing repairs, and some parking lot repairs.

### **III. Conclusions of Law**

PAAB has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2011). PAAB is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). PAAB determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). PAAB considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* PAAB considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

Initially, the burden of proof in an assessment protest rests with the taxpayer, who “must establish a ground for protest by a preponderance of the evidence.” *Compiano v. Polk Cnty. Bd. of Review*, 771 N.W.2d 392, 396 (Iowa 2009). However, if the taxpayer “offers competent evidence by at least two disinterested witnesses that the market value of the property is less than the market value determined by the assessor, the burden shifts to the board of review to uphold the assessed value.” *Id.* at 396-397; § 441.21(3). Failure to shift the burden of proof is not equivalent to failing to satisfy the burden of proof. *Id.* at 397. “Ultimately, the burden of proof is one of persuasion,” which “comes into play after all of the evidence is introduced at hearing.” *Id.* at 397 n.3. In this case, Fareway has not shifted the burden because it did not provide expert opinions of value by two disinterested witnesses. It therefore must establish its claims by a preponderance of the evidence.



## A. General Principles of Law Applicable to Assessment of Real Property

In Iowa, property is assessed for taxation purposes following Iowa Code section 441.21. Iowa Code subsections 441.21(1)(a) and (1)(b) require property subject to taxation to be assessed at its actual value, or fair market value. *Soifer v. Floyd County Bd. of Review*, 759 N.W.2d 775, 778 (Iowa 2009).

“*Market value*” is defined as the fair and reasonable exchange in the year in which the property is listed and valued between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and each being familiar with all the facts relating to the particular property.

§ 441.21(1)(b). In determining market value, “[s]ales prices of the property or comparable property in normal transactions reflecting market value, and the probable availability or unavailability of persons interested in purchasing the property, shall be taken into consideration.” *Id.* Using the sales price of the property, or sales of comparable properties, is the preferred method of valuing real property in Iowa. *Id.*; *Compiano*, 771 N.W.2d at 398; *Soifer*, 759 N.W.2d at 779; *Heritage Cablevision v. Bd. of Review of Mason City*, 457 N.W.2d 594, 597 (Iowa 1990). “[A]bnormal transactions not reflecting market value shall not be taken into account or shall be adjusted to eliminate the effect of factors which distort market value.” § 441.21(1)(b). Abnormal transactions include, but are not limited to, foreclosure or other forced sales, contract sales, or discounted purchase transactions. *Id.*

“[A]lternative methods to the comparable sales approach to valuation of property cannot be used when *adequate* evidence of comparable sales is available to *readily* establish market value by that method.” *Compiano*, 771 N.W.2d at 398 (emphasis added). “Thus, a witness must first establish that evidence of comparable sales was not available to establish market value under the comparable-sales approach before the other approaches to valuation become competent evidence in a tax assessment proceeding.” *Id.* (citing *Soifer*, 759 N.W.2d, at 782); *Carlson Co. v. Bd. of Review of Clinton*, 572 N.W.2d 146, 150 (Iowa 1997). The first step in this process is determining if *comparable* sales exist.

*Soifer*, 759 N.W.2d at 783. If PAAB is not persuaded as to the comparability of the properties, then it “cannot consider the sales prices of those” properties. *Id.* at 782 (citing *Bartlett & Co. Grain Co. v. Bd. of Review of Sioux City*, 253 N.W.2d 86, 88 (Iowa 1977)).

Whether other property is sufficiently similar and its sale sufficiently normal to be considered on the question of value is left to the sound discretion of the trial court.

*Id.* at 783 (citing *Bartlett & Co. Grain*, 253 N.W.2d at 94).

Similar does not mean identical and properties may be considered similar even if they possess various points of difference. *Id.* (other citations omitted). “Factors that bear on the competency of evidence of other sales include, with respect to the property, its ‘[s]ize, use, location and character,’ and, with respect to the sale, its nature and timing. *Id.* (other citations omitted). Admitted sales must be adjusted “to account for differences between the comparable property and the assessed property to the extent any differences would distort the market value of the assessed property in the absence of such adjustments. *Id.* (other citations omitted).

However, where PAAB is convinced that comparable sales do not exist or cannot *readily* determine market value than other factors such as cost and income can be used. § 441.21(1)(b); *Compiano*, 771 N.W.2d at 398 (citing *Soifer*, 759 N.W.2d at 782); *Carlon Co.*, 572 N.W.2d at 150; § 441.21(2).

Finally, assessors are permitted to consider the use of property as a going concern in its valuation. *Riso v. Pottawattamie Cnty. Bd. of Review*, 362 N.W.2d 513, 517 (Iowa 1985). When an assessor values property as a going concern, “he is merely following the rule that he must consider conditions as they are.” *Soifer*, 759 N.W.2d at 788 (quoting *Maytag Co. v. Partridge*, 210 N.W.2d 584, 590 (Iowa 1973)). The assessor is “recognizing the effect of the use upon the value of the property itself. He is not adding on separate items for good will, patents, or personnel.” *Id.*

## B. Claim of Over-Assessment

Fareway contends the Adel and Waukee properties are assessed for more than authorized by law under section 441.37(1)(a)(2). To prevail on a claim that an assessment is for more than authorized by section 441.21(1), the law requires two showings. *Heritage Cablevision*, 457 N.W.2d at 597. First, the record must show the property is over assessed; and second, what the fair market value of the property should be. *Id.*; *Boekeloo*, 529 N.W.2d at 276-277. If PAAB “determines the grounds of protest have been established, it must then determine the value or correct assessment of the property.” *Compiano*, 771 N.W.2d at 397. Here, PAAB “makes its independent determination of the value based on all the evidence.” *Id.*

## C. Analysis

Because Fareway has not shifted the burden of proof and the Board of Review’s analysis supports the current assessment, we do not believe it necessary in this case to evaluate the Board of Review’s analysis. *See Carroll Area Child Care Center, Inc. v. Carroll County Bd. of Review*, 613 N.W. 2d 252, 254 (Iowa 2002) (citing *First Nat’l Bank v. City Council*, 136 Iowa 203, 206, 112 N.W. 829, 830 (1907)). Rather, we need only decide if Lock’s appraisals show the subject properties’ current assessments are excessive and reflects the properties’ correct value to sustain Fareway’s burden of establishing the properties are assessed for more than authorized by law. References to the Board of Review’s testimony and analysis are made only to the extent they are necessary to our review of Lock’s analysis. We ultimately conclude that Lock’s appraisals do not demonstrate either the Adel or Waukee property are over-assessed and do not accurately reflect the properties’ fair market value for assessment purposes.

We are not convinced of Lock’s due diligence in evaluating the sales conditions, as demonstrated by the incomplete information in his report regarding the sale of the Adel property, which was also the ideal comparable. His report fails to identify that broker fees were not included in

the transaction and that the buyer intended to and did, in fact, immediately remodel the property.

Consistent with appraisal methodology, positive adjustments should have been made to the sale price to account for these modifications. APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE p. 412-14 (14th ed. 2013). Without adjustments, the price ultimately reflects a value less than its full utility to the purchaser.

Lock was unable to answer whether he believed the inclusion of the remainder of his sales accurately reflected the value of the subject property as it was being used on January 1, 2013. We recognize that Sales 2 and 4 both had some period of vacancy prior to sale. In the case of Sale 4, it appears the vacancy period was potentially up to two years. The case law concerning property assessment is clear that a building is not valued as an empty shell, but that the assessor may properly consider the property's value as a going concern. *Soifer*, 759 N.W.2d at 787 (citing *Lake City Elec. Light Co. v. McCrary*, 132 Iowa 624, 110 N.W. 19, 20 (1906) (stating that assessor was entitled to consider property as a going concern "instead of mere aggregation of dead material.")). While some period of vacancy is not unusual for a commercial sales transaction, consideration of a sales transaction with prolonged vacancy, without appropriate adjustment, may result in a valuation below the subject's going concern value.

Moreover, we add that upon purchase, the majority of Lock's comparable properties were not used as grocery stores like the subjects. While the use of comparable properties need not be identical to the subject, a difference in use affects their persuasiveness. *Soifer*, 759 N.W.2d at 786. We simply do not find Lock's sales as persuasive as the sales offered by the Board of Review, which included sales of properties for continued use as grocery stores.

Further, Lock relied on both qualitative and quantitative adjustments in his sales comparison analysis. Ultimately, we do not find he adequately explained his qualitative analysis or supported it in his conclusions. Lock testified that the plusses and minuses he used in his qualitative analysis could

mean “anything.” The lack of quantified adjustments leads us to question the comparability of these sales. *Soifer*, 759 N.W.2d at 783 (“If . . . points of difference between the assessed property and the other property are not quantifiable so as to permit the required adjustment, the other property will not be considered comparable.”).

Lock also developed the cost approach. In his appraisal of the Adel property, he failed to consider land sales in Dallas County and he could not explain why he did not consider them in his analysis. Lock admitted that had he included that land sale, his conclusions would likely have been higher. The land sales Lock used in his cost approach for the Waukee property have indications they were not normal, arm’s length transactions. This is substantiated by the listings Lock provided that show his \$3.00 per-square-foot conclusion was below the existing market value of land in the Waukee area.

Lastly, Lock developed the income approach; however he failed to research or verify that the subject Adel property had been rented as a grocery store at \$7.55 per-square-foot prior to its sale. He ultimately determined a market rent of \$7.00, with no reconciliation to the prior actual rents. Moreover, his vacancy rate seems unreasonably high for an owner-occupied grocery store.

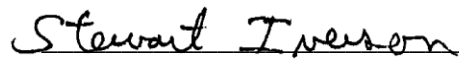
In summary, we find Lock’s methodology and analysis undervalues the subject properties as operating grocery stores. The aforementioned errors, failure to reconcile salient facts regarding recent sales and leases on the Adel property, and lack of quantified adjustments undermine his credibility and his conclusions. In total, we find Lock’s conclusions do not fairly and accurately represent the properties’ fair market values as of January 1, 2013. For the foregoing reasons, this Board finds that Fareway has not sustained its burden of showing the properties are assessed for more than authorized by law.

THE APPEAL BOARD ORDERS the 2013 assessments of Fareway's properties located at 804 Nile Kinnick S., Adel, and 200 Laurel Street, Waukee, set by the Dallas County Board of Review, are affirmed.

Dated this 22nd day of June, 2015.



Karen Oberman, Presiding Officer



Stewart Iverson, Board Chair



Jacqueline Rypma, Board Member

Cc:

Patrick T. Burk

William R. Stiles